IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5005 OF 2004

Roshanbi Mohammad Yusuf Bagwan ... Petitioner

V/s.

Shri Shaikh Usman Shaikh Ratan ... Respondent

Mr.S.V. Pitre for Petitioner
Mr.K.S. Dewal for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 3, 2005**

P.C.:

. The Petitioner has challenged the order dated 16.2.2004 disposing off the appeal. According to the Petitioner, the original proceedings were pending before one learned Judge and transferred to another learned Judge, who had on the very date of transfer of the matter, proceeded to decide it ex-parte. According to the petitioner, there was some communication gap between her lawyer and herself and hence, she could not attend the Court on the relevant day. The Petitioner has filed this petition for interference under Article 227 of the Constitution of India.

2. The learned Advocate for the Petitioner submits that she had been present on all the earlier dates and

had been vigilant. It was only when the matter was transferred to the other Court that she could not remain present nor was her lawyer able to appear in the matter. He submits that the Petitioner-tenant should not be penalised in this manner on account of her lawyer's absence on one date. The suit filed by the Respondent has been dismissed by the trial Court.

3. In such circumstances, it would be appropriate to set aside the impugned order although opposed vehemently on behalf of the Respondent. The impugned order is set aside on condition of payment of costs of Rs.1,000/-.

4. The lower Appellate Court is requested to dispose off the appeal as expeditiously as possible.

5. Writ Petition is disposed off accordingly.